

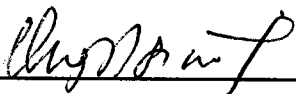
17 May 2007

**Subject:** Addendum No. 2 to the Plans and Specifications for the **Fuel Cell System**.

Notice is given that the revisions listed in the attached Addendum No. 1 are hereby made part of and incorporated into the Plans and Specifications for the **Fuel Cell System**.

**This addendum should be acknowledged when your bid is submitted. Failure to acknowledge the Addendum may constitute grounds for rejection of the bid.**

John Stufflebean  
Director  
Environmental Services Department

By: 

Ting Ong, PE  
Senior Engineer

Attachment

cc: Cynthia Jaszka, City Clerk  
Dori Guerreiro, Office of Equality Assurance

## **Addendum No. 2**

### **Fuel Cell System**

### **Specifications**

#### **1. Notice to Contractors**

A. Page 2, under **Filing of Bids**, change “on or before 3:00 pm Thursday, May 24, 2007” with “on or before 3:00 pm Thursday, June 7, 2007”.

B. Page 4, replace paragraph on Bond Requirements with the following:

Bidder's attention is directed to those provisions of the Specifications which require the contractor to whom the contracts for the work is awarded, to file with the City Clerk at the time the contracts are executed, a Contractor's Payment Bond and a Bond for Faithful Performance for the Design-Build requirements and a Performance Bond for the Service Agreement meeting all the requirements of the Specifications and approved by the City Attorney of the City of San Jose. Bonds shall be executed by a surety possessing a valid certificate of authority issued by the California Department of Insurance and shall name the City of San Jose as beneficiary. The Contractor's Faithful Performance Bond for the Design-Build contract shall be for 100% of the contract price for that item (Bid Item 2), and the Contractor's Faithful Performance Bond for the Service Agreement shall be 100% of the contract price for that item (Bid Items 3 and 4) including all options. The Contractor's Payment Bond shall be for 100% of the contract price for the Design-Build contract (Bid Item 2).

2. **Bid to City Of San José** - Replace the entire section with **Bid to City of San Jose** issued herewith.
3. **Bidder's Bond** - Replace the entire section with **BIDDER'S BOND** issued herewith.
4. **Contract** - Replace the Schedule of Quantities with the Schedule of Quantities issued herewith.
5. **Fuel Cell Service Agreement** - Replace the entire section with **Fuel Cell Service Agreement** issued herewith.
6. **Special Provisions** - The following paragraphs were added to the Special Provisions:

**Section 3-1.02A Faithful Performance Bond** of the Standard Specification (page 3-1), first sentence of first paragraph shall be replaced with the following sentence:

The faithful performance bonds shall be a bond in the penal sum of at least 100 percent of the contract price for the Design-Build contract (Bid Item 2), and a bond in the penal sum of at least 100 percent of the contract price for the Fuel Cell System Service Agreement (Bid Items 3 and 4), each, secured by 2 or more sufficient sureties approved by the Director of

Finance or by an admitted surety company, conditioned upon the Contractor's faithful performance of the contract terms within the contract time.

**Section 3-1.02B Contractor's Payment Bond** of the Standard Specification (page 3-1), first sentence of first paragraph shall be replaced with the following sentence:

The payment bond shall be a good and sufficient bond approved by the City in an amount not less than 100 percent of the contract price for the Design-Build contract (bid item 2).

**6-1.10A Guarantee** - In addition to all other rights and remedies which City may have against Contractor, all work shall be expressly guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship of one (1) year from the date of final acceptance of the Contract.

If, within any express guarantee period, repairs or changes are required in connection with expressly guaranteed work which, in the opinion of the Engineer, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract, the Contractor shall promptly, upon receipt of notice from the Engineer and without expense to the City:

- C. Place in satisfactory condition in every particular all of such expressly guaranteed work, correcting all defects herein;
- D. Correct all damage to the building, site, work, equipment or contents thereof, which in the opinion of the Engineer is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and
- E. Correct any work or material, or the equipment and contents of said building, site, or work disturbed in fulfilling any such express guarantee.

If the Contractor, after notice, fails to proceed promptly to comply with the terms of the express guarantee, the City may have the defects corrected and the Contractor and his surety shall be liable for all expenses incurred.

This guarantee shall be in addition to all other rights and remedies that the City may have at law or in equity.

**Section 9-1.06 Partial Payments** of the Standard Specifications (page 9-12) shall be revised to add the following:

Design Payment – Progress payments for the design portion of the design-build project shall be made to the Contractor according to the following schedule. Upon completion of a 50% design, the Contractor may submit a written request for partial payment and, upon approval by the City's Engineer, shall be eligible for payment of an amount not exceeding 50% of the value of Bid Item 1 as listed on Page 4, Schedule of Quantities, of the Proposal. Upon completion of a 100% design, the Contractor may submit a written request for partial payment and, upon approval by the City's Engineer, shall be eligible for payment of an amount not exceeding 90% of the value of Bid Item 1 as listed on Page 4, Schedule

of Quantities, of the Proposal. Upon acceptance of the 100% design by the City's Engineer, the Contractor shall submit a written request for final payment. No such estimate or payment shall be required to be made when, in the judgment of City's Engineer, the work is not proceeding in accordance with the provisions of the Contract. No estimate or payment shall be construed to be acceptance of any defective design.

Construction Payment – The Contractor shall submit Schedule of Values based on accepted progress schedule. The Schedule of Values shall list all costs associated installing and commissioning the Fuel Cell System. The sum total of all cost shall equal the value of Bid Item 2 as listed on Page 4, Schedule of Quantities, of the Proposal. The Contractor shall submit progress payment on a monthly basis and base payment requests on the breakdowns of costs for each scheduled activity and the percentage of completion for each activity.

7. **Attachment 4** - Replace the entire section with **Attachment 4** issued herewith.

8. **Specification Section A1000** –

Add the following to paragraph 2.01 General Design Criteria, Subparagraph G:

The maximum emissions shall also meet California Air Resources Board standards.

### **Questions and Answers**

1. **Question** - Section 9-1.06 of the Special Provisions states that no payment will be made to the contractor for the design and/or construction of the project until the fuel cell is accepted by PG&E. Can the City of San Jose change this Special Provision? For our company to provide service for this contract a Schedule of Value will need to be developed that is acceptable to our company and the City. Monthly invoices will need to be paid based on a percentage complete of each item developed in the schedule of values.

**Answer** - See revision to Special Provisions, Section 9-1.06 Partial Payments above.

2. **Question** - Is a Storm Water Prevention Plan required for this project?

**Answer** – Per Special Provision, Section 10, Storm Water Pollution Prevention will only be applicable to any construction activity that involves one acre or more of Total Area to be disturbed.

3. **Question** - Based on the 5/1/07 Prebid meeting it is apparent that the City of San Jose was unaware of the necessity of a fuel cell gas skid. This skid will require additional space and will require a significant lead time before a cost for the gas skid is available. Is it possible to proceed with the current design/build RFP to install only the fuel cell and create a separate RFP for the gas skid?

**Answer** – See revision to **Specification Section A1000, Part 2.01D** issued in Addendum 1.

4. **Question** - As respects Roman numeral IV, letter C, on the Builders Risk and Excess Liability policies we cannot give 30 days notice of suspended, voided or reduced coverage.

We can only give 30 days notice of cancellation. However, we can give 30 days notice of cancellation or reduction in coverage on the General Liability, Auto Liability and Workers' Compensation policies. Is this acceptable?

**Answer** - See revision to Attachment 4 issued herewith.

5. **Question** - Please provide clarification concerning the gas that will feed the fuel cell. It was stated at the 5/1/07 prebid that the gas that flows through the utilidor that will eventually serve as a gas tie-in for the fuel cell has a natural gas line and a blended gas line. The blended gas is a mixture from the landfill gas and from the digester gas. Is this a blended gas or is it strictly gas from the digester?

**Answer – Specification Section A1000, Part 3** - The primary fuel source for the fuel cell system will be digester gas. Natural gas will only be used as a backup.

6. **Question** - What are the permit requirements for this project?

**Answer - Specification Section A1000, Part 1.04B** - The Contractor shall be responsible for making sure all permits required to build and operate the FCS are acquired. The City has applied for an Authority to Construct and/or Permit to Operate a Fuel Cell with Fuel Pretreatment System and have received notification from BAAQMD that the operation is exempt from permitting. See letter from BAAQMD issued herewith.

7. **Question** - As it relates to the assignability of the Fuel Cell Services agreement, will the contractor be released of any and all responsibilities once the Fuel Cell Services agreement is in place? Also, it is our understanding that the Fuel Cell Services agreement will begin once PG&E accepts the fuel cell installation. Is this assumption correct?

**Answer** - The contractor who is awarded the job must also enter into the service agreement. The contractor can assign the service agreement to the manufacturer, but only if the manufacturer agrees to accept all terms and conditions of the service agreement. If the contractor subcontracts out all or part of the service agreement, the contractor will remain fully responsible. For commencement of the Fuel Cell Service Agreement, refer to the Term of Agreement of the Service Agreement.

8. **Question** - Please define the construction warranty. Also, clarify the difference between the construction warranty and the fuel cell services agreement.

**Answer** - See revision to Special Provisions, Section 6-1.10A Guarantee above, for construction warranty. The Fuel Cell service agreement requires that the Contractor warrants to City minimum performance measures for the Fuel Cell System.

9. **Question** - Does the contractor include all local taxes in their respective estimates?

**Answer** - The bid shall include all Federal, State, and other taxes applicable to the project. See note at the end of the Schedule of Quantities in **Bid to City of San Jose** issued herewith.

10. **Question** –

Clarification: The Fuel Cell Energy fuel cell will operate according to the attached manufacturers specification. These specifications should be included into the official RFP documentation.

Please pay particular attention to the Fuel Specification. The stated conversion efficiency of 47% is based on the gas containing a minimum methane content of 60%. A derate factor is applied to this stated efficiency if the provided gas that contains a methane content below 60%. Based on the 57% methane content of the digested gas provided by the City of San Jose the total output of the fuel cell will be 1070 kW.

The emission data is also specified based on the fuel & water adhering to the manufacturers specification.

The contractor and/or the manufacturer cannot be held responsible for the performance of the fuel cell if the manufacturer's specifications are not met.

**Answer** - See revision to Specification Section A1000, Paragraphs 2.01E and 2.01G issued in Addendum 1.

11. **Question** – If the statement of financial responsibility is already on file with the City of San Jose, does a new statement need to be submitted with this proposal?

**Answer** – If the statement of financial responsibility is already on file with the City of San Jose, a new statement does not need to be submitted with this proposal.

12. **Question** –

The emissions of a FuelCell Energy DFC1500 will meet the CARB '07 standards but will not provide CO emissions at 0.05 lb/MWh.

DFC1500MA CO emissions may be as high as 0.1 lb/MWh

**Answer** – See revision to Specification Section A1000, Part 2.01G issued in Addendum 1 and above.

13. **Question** –

Engineers estimate is \$4.8 Million- There appears to be confusion if this price includes the separate and externally located gas conditioning system. The engineers estimate does not appear to take into account the cost of this additional piece of hardware.

The gas conditioning system supplied within the fuel cell boundary limits does not compress or dewater the digester gas. Additionally this gas de-sulfurizer will only remove total sulfur up to 12 PPM and other contaminants per the attached specification for one gas stream.

The external gas conditioning system be required to dewater, potentially compress and clean the digester gas should be completely specified in a separate competitive bid process.

**Answer** – See revision to Specification Section A1000, Part 2.01D issued in Addendum 1.

14. **Question** – Will sales tax be applied to this project? If so what is the sales tax for this location.

**Answer** – See Question 10 above. Use link below for City of San Jose tax rates.  
<http://www.boe.ca.gov/cgi-bin/rates.cgi>